

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 2:11 cv-05045-ER

* * * * *
GARY CHRISTY,
Plaintiff

Vs.

EOS CCA,
Defendant
* * * * *

DEPOSITION OF JOHN F. BURNS, JR., taken on behalf of the Plaintiff pursuant to Notice, before Carol DiFazio, CSR: #108293, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of EOS CCA, 780 Longwater Drive, Norwell, MA, on Thursday March 15, 2012, commencing at 1:30 p.m.

APPEARANCES:
JACOB GINSBURG, ESQ., of Kimmel & Silverman, P.C., 30 East Butler Pike, Ambler, PA 19002, on behalf of the Plaintiff.

ANDREW M. SCHWARTZ, ESQ., of Marshall, Dennehey Warner, Coleman & Goggin, P.C., 1845 Walnut Street, 17th floor, Philadelphia, PA 19103 on behalf of the Defendant.

ALSO PRESENT: Susan Giordano, Vice President, Compliance and Risk Management, EOS CCA.

PROCEEDINGS

MR. GINSBURG: I do not have any stipulations.

MR. SCHWARTZ: This deposition is being conducted under a matter in Pennsylvania and I just want to make sure that we reserve every objection other than form and privilege and obviously we have the typical other stipulations.

MR. GINSBURG: That's fine.

JOHN FRANCIS BURNS, Jr., having been satisfactorily identified and duly sworn by me, a Notary Public in the Commonwealth of Massachusetts, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ginsburg) So Jacob Ginsburg, I am here for the Plaintiff, Gary Christy, and once again here with Kimmel & Silverman. I ask the deponent Mr. Burns. Can you please state your full name?

A. My full name is John Francis Burns, Junior.

Q. And Mr. Burns, what is your position with EOS CCA?

A. I'm the vice-president of corporate services.

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Q. And have you ever been deposed before, Mr. Burns?

A. Yes.

Q. Approximately how many times?

A. 12.

Q. 12 times, is that precise or approximate?

A. That's approximate.

Q. Have you ever been deposed for an FDCPA matter?

A. Yes.

Q. And how many times do you think you have been deposed for an FDCPA matter?

A. The depositions that I referenced were relating to FDCPA.

Q. All of the depositions?

A. Right.

Q. And how many of these depositions have been in the last year?

A. Maybe, I don't know the exact number. I would say 3.

Q. Three depositions. And do you remember do you know the names of the cases for which you have been deposed?

<p style="text-align: right;">5</p> <p>1 A. I don't recall them.</p> <p>2 Q. And they were all on behalf of EOS CCA,</p> <p>3 correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Thank you. Now since you're familiar with</p> <p>6 depositions, I know this might be redundant to you,</p> <p>7 but do you understand that although we're in an</p> <p>8 informal setting that your answers must be truthful?</p> <p>9 A. Yes.</p> <p>10 Q. And Mr. Burns, are you under the influence</p> <p>11 of any drug or alcohol that would impair your</p> <p>12 ability to be truthful or recall events and</p> <p>13 occurrence accurately?</p> <p>14 A. No.</p> <p>15 Q. And just to be clear, I don't want you to</p> <p>16 guess or estimate anything. If you don't know</p> <p>17 that's fine to say "I don't know." If at any time</p> <p>18 you want a break, please just let me know. But I do</p> <p>19 ask that you not take a break in the middle of an</p> <p>20 answer or before an answer. And as you probably</p> <p>21 know, any discussions that you have with</p> <p>22 Mr. Schwartz today or during this deposition are not</p> <p>23 subject to the attorney/client privilege that</p>	<p style="text-align: right;">7</p> <p>1 Schwartz to me. I have the defendant's EOS CCA's</p> <p>2 answers and objections to the plaintiff's</p> <p>3 interrogatories. I have got a copy of the responses</p> <p>4 and objections to the plaintiff's request for</p> <p>5 production of documents. I've got answers to the</p> <p>6 complaint with affirmative defenses. And I've got</p> <p>7 some copies of correspondence that were sent to the</p> <p>8 attorney of -- from our firm to Kimmel & Silverman</p> <p>9 that were mailed back, well, mailed back a little</p> <p>10 while ago. And then I have a folder that has</p> <p>11 information, other information relative to the case</p> <p>12 which is mostly copies of the same documents I just</p> <p>13 referenced. And basically that's it.</p> <p>14 Q. Now, the email that you received from</p> <p>15 Mr. Schwartz, what is the subject matter of this</p> <p>16 email?</p> <p>17 A. It's just --</p> <p>18 MR. SCHWARTZ: I am going to object.</p> <p>19 That's privileged communication.</p> <p>20 If you want to give a general</p> <p>21 description of the most general detail that's fine,</p> <p>22 otherwise I reserve the objection.</p> <p>23 A. Basically it was forwarding the email from</p>
<p style="text-align: right;">6</p> <p>1 normally is in effect. Do you understand that?</p> <p>2 A. Yes.</p> <p>3 Q. And just so the court reporter can get</p> <p>4 everything accurately, I also ask that you wait for</p> <p>5 me to complete my questions and you try not to speak</p> <p>6 at the same time as me. And if we start to speak at</p> <p>7 the same time that we'll have to backtrack and do</p> <p>8 things orderly. Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. Thank you. Now, you understand that you're</p> <p>11 here subject to a deposition notice for the</p> <p>12 corporate representative of EOS CCA for Gary</p> <p>13 Christy's claim against the EOS CCA?</p> <p>14 A. Yes.</p> <p>15 Q. Did you bring any documents with you to</p> <p>16 today's deposition?</p> <p>17 A. Yes.</p> <p>18 Q. I'm sorry. I'm having trouble hearing.</p> <p>19 A. Yes.</p> <p>20 Q. Thank you. Which documents did you bring</p> <p>21 with you today?</p> <p>22 A. I have copies of the notice of taking of</p> <p>23 deposition. I have copy of an email from Attorney</p>	<p style="text-align: right;">8</p> <p>1 Attorney Ginsburg to Andrew Schwartz saying what was</p> <p>2 going to be done today and sorry for the short</p> <p>3 notice. So that was forwarded to me. So I made a</p> <p>4 copy of that so I had that to refer to.</p> <p>5 Q. I remember that email. We'll move on. And</p> <p>6 these were all documents that you reviewed in</p> <p>7 preparing for this deposition?</p> <p>8 A. Yes.</p> <p>9 Q. And I am going to start of with some</p> <p>10 background about you, Mr. Burns. You said your full</p> <p>11 name is John Francis Burns?</p> <p>12 A. Junior. That is correct.</p> <p>13 Q. John France Burns, Junior. What is your</p> <p>14 current business address?</p> <p>15 A. 700 Longwater Drive, Norwell,</p> <p>16 Massachusetts.</p> <p>17 Q. And you are the vice-president, can you</p> <p>18 state your position one more time?</p> <p>19 A. Vice-president of corporate services.</p> <p>20 Q. And how long have you had this position?</p> <p>21 A. About 17 years.</p> <p>22 Q. So you have been -- has the position always</p> <p>23 had the same name?</p>

<p style="text-align: right;">9</p> <p>1 A. I've had this title but I had additional 2 responsibility for part of that period of time. So 3 I would have been also identified as senior 4 financial officer but at the current time and for 5 the last six years I have not held that position. 6 Q. And you are a director of EOS CCA? 7 A. No. 8 Q. Are you an officer? 9 A. Yes. 10 Q. And how many officers are there for EOS 11 CCA? 12 A. I don't know the exact number. 13 Q. Can you approximate? Is it 20, 10 -- 14 A. 20. 15 MR. SCHWARTZ: Objection. Sorry. Hold 16 on. I am going to put an objection on the record. 17 You can answer if you can. 18 MR. GINSBURG: What is the basis of the 19 objection? 20 MR. SCHWARTZ: The basis of the 21 objection is this: Where are you going with this? 22 I don't want to traipse on any confidential 23 proprietary information. If you're asking him to</p>	<p style="text-align: right;">11</p> <p>1 that symbolized Collection Company of America which 2 was the original doing business title for this 3 company. So the combination of the new parent EOS 4 with our existing CCA became EOS CCA. 5 Q. And is the EOS company, is that still a 6 parent company for EOS CCA? 7 A. Yes. The parent company is EOS Holding USA 8 to Collecto which is the corporate name for the 9 entity that does business as EOS CCA. 10 Q. Sorry for my lack of understanding. 11 Collecto is currently the parent company or is it an 12 alterego? 13 A. Collecto is the corporation. It's 14 Collecto, Incorporated, doing business as EOS CCA. 15 Q. Thank you. So approximately how many 16 employees does EOS CCA have? 17 A. 1080. 18 Q. And where does EOS CCA employ these 19 individuals? 20 A. There is 10 offices throughout the United 21 States. There are five offices in Canada. There is 22 one office in India. 23 Q. And how many, approximately how many people</p>
<p style="text-align: right;">10</p> <p>1 disclose other officers, I am going to instruct him 2 not to answer. In that case with the objection in 3 place marked for later on. If he can answer that's 4 fine. 5 MR. GINSBURG: I'm not asking for any 6 confidential information. 7 Q. So there are approximately 20 officers of 8 EOS CCA. And who is the president of EOS CCA? 9 A. Paul Leary, junior. 10 Q. Paul Larry. And is he also in Norwell, 11 Massachusetts? 12 A. Yes. 13 Q. And EOS CCA is that a publicly traded 14 company? 15 A. No. 16 Q. It's not. It's privately held? 17 A. That's correct. 18 Q. And is it a subsidiary of any publicly 19 traded corporation? 20 A. No. 21 Q. And what does EOS CCA stand for? 22 A. The initials EOS were from the German 23 parent company of ours, and CCA are the initials</p>	<p style="text-align: right;">12</p> <p>1 work in each office? I imagine it varies greatly. 2 A. It varies greatly. 3 Q. How many are there -- are there managers in 4 every office or supervisors? How do the collectors, 5 how are they organized and trained in each office? 6 A. There are managers of each office, 7 directors, and within the staffing at the office 8 there is typically a training manager that does 9 training for the collection staff? 10 Q. And the debt collectors are the employees, 11 do they all have to be physically at the office, or 12 can they work from home or from remote access? 13 A. No one is allowed to work remotely. They 14 all must be in the office. 15 Q. And India and Canada are the only 16 nonAmerican or nonUnited States of American offices 17 for EOS CCA? 18 A. Yes. 19 Q. And approximately how many employees does 20 EOS CCA have in Canada? 21 A. 125. 22 Q. And how many in India? 23 A. 50.</p>

<p style="text-align: right;">13</p> <p>1 Q. And onto back about yourself. Can you</p> <p>2 describe your educational background starting with</p> <p>3 high school, college, and any postgraduate education</p> <p>4 you've received, Mr. Burns?</p> <p>5 A. I graduated from Weymouth High School in</p> <p>6 Massachusetts. I graduated from Columbia College in</p> <p>7 the City of New York.</p> <p>8 Q. Which year was that?</p> <p>9 A. 1968.</p> <p>10 Q. Do you have any postgraduate education?</p> <p>11 A. I attended Babson College in Wellesley,</p> <p>12 Massachusetts. I completed about 50 percent of the</p> <p>13 MBA program.</p> <p>14 Q. But you do not have your MBA?</p> <p>15 A. That's correct.</p> <p>16 Q. And what was your degree in at Columbia?</p> <p>17 A. Anthropology.</p> <p>18 Q. How long have you worked, Mr. Burns, in the</p> <p>19 collection industry?</p> <p>20 A. I worked for a period of time after I got</p> <p>21 out of college for a company called Dun & Bradstreet</p> <p>22 which provided collection services as well as credit</p> <p>23 reporting services. That was for a period of four</p>	<p style="text-align: right;">15</p> <p>1 Q. So you are involved in compliance that</p> <p>2 assumedly includes FDCPA and FCRA compliance?</p> <p>3 A. Yes.</p> <p>4 Q. And what else does compliance entail?</p> <p>5 A. Compliance approves all tactics, scripts,</p> <p>6 letters, that would be used by the operations staff;</p> <p>7 and compliance will also review contracts,</p> <p>8 agreements with vendors, clients, anything to do</p> <p>9 with contracts or procedures that the company must</p> <p>10 follow.</p> <p>11 Q. And you're also involved in debt</p> <p>12 purchasing, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Now, the debt that EOS CCA purchases, let</p> <p>15 me backtrack. EOS CCA collects on debts that the</p> <p>16 company owns, correct?</p> <p>17 A. Partially, yes.</p> <p>18 Q. And do they also collect on behalf of third</p> <p>19 party creditors?</p> <p>20 A. Yes.</p> <p>21 Q. So they collect on debts that they own and</p> <p>22 that they do not own?</p> <p>23 A. That's correct.</p>
<p style="text-align: right;">14</p> <p>1 years. And I have been associated with EOS CCA for</p> <p>2 a period of 20 years. 17 of that as a full-time</p> <p>3 employee, three years beginning as a director of the</p> <p>4 company.</p> <p>5 Q. And you said you have been vice-president</p> <p>6 for those 17 years?</p> <p>7 A. Yes.</p> <p>8 Q. And for the first three years can you</p> <p>9 describe your position in a little more detail?</p> <p>10 A. Well, the first three years that I was</p> <p>11 affiliated with the company I was an outside</p> <p>12 director. I was on the board of directors but not</p> <p>13 an employee of the company.</p> <p>14 Q. You got on as a director based on your past</p> <p>15 experience in collections?</p> <p>16 A. It was based on experience in other areas</p> <p>17 of business.</p> <p>18 Q. Could you briefly describe your current</p> <p>19 duties as vice-president?</p> <p>20 A. My current duty is to oversee compliance</p> <p>21 and risk management. I am also involved with</p> <p>22 facilities and strategic planning and the debt</p> <p>23 purchasing activities of the company.</p>	<p style="text-align: right;">16</p> <p>1 Q. And could you give an approximate breakdown</p> <p>2 of what percentage of the debts EOS CCA owns?</p> <p>3 A. The current activity for the debt the</p> <p>4 company owns is about 5 percent.</p> <p>5 Q. And the other 95 percent are on behalf of</p> <p>6 third party creditors?</p> <p>7 A. That's correct.</p> <p>8 Q. And are the debts that EOS CCA collects,</p> <p>9 are they exclusively consumer debts or are they also</p> <p>10 business debts?</p> <p>11 A. The majority is consumer. There are some</p> <p>12 business debts.</p> <p>13 Q. Are those separated, sorry, are those</p> <p>14 categorized separately, or do they all get lumped</p> <p>15 together?</p> <p>16 A. They're usually separate.</p> <p>17 Q. And are there separate collectors for</p> <p>18 business debts than consumer debts?</p> <p>19 A. Yes.</p> <p>20 Q. Now staying with general, is part of the</p> <p>21 FDCPA training that EOS CCA does is there training</p> <p>22 regarding contacting third parties to collect debts?</p> <p>23 A. Yes.</p>

<p style="text-align: right;">17</p> <p>1 Q. Now that training, does that involve</p> <p>2 manuals or seminars? How does that training exactly</p> <p>3 take place?</p> <p>4 MR. SCHWARTZ: Objection as to form.</p> <p>5 For a number of reasons. The first reason is are we</p> <p>6 talking about telephone calls or are we talking</p> <p>7 about a letter sent to a debtor?</p> <p>8 Q. This is general.</p> <p>9 MR. SCHWARTZ: The point is are you</p> <p>10 asking for manuals with respect to telephone</p> <p>11 communications or written communications because</p> <p>12 there is obviously a big difference.</p> <p>13 MR. GINSBURG: I was asking generally,</p> <p>14 but since you raise that objection I should make it</p> <p>15 more specific to this case.</p> <p>16 Q. Is there training regarding letters sent to</p> <p>17 third parties?</p> <p>18 A. Is there training -- excuse me. We don't</p> <p>19 send letters to third parties.</p> <p>20 Q. Is there training done in order to avoid</p> <p>21 that?</p> <p>22 A. There is training done for all aspects of</p> <p>23 our business, but there is not specific training on</p>	<p style="text-align: right;">19</p> <p>1 trainers. It's manuals, any of those are all part</p> <p>2 of it.</p> <p>3 Q. And how long is the training when, for</p> <p>4 instance, if I were to start with EOS CCA as a debt</p> <p>5 collector, how long would the training process be</p> <p>6 before I start making phone calls and sending</p> <p>7 letters or writing letters, et cetera?</p> <p>8 A. You wouldn't write letters. Collectors</p> <p>9 don't write letters, but the initial training in the</p> <p>10 classroom is 3 days. Then they must pass a test</p> <p>11 before they're deemed to be approved to go on the</p> <p>12 floor, and then they work with an existing</p> <p>13 experienced collector for a couple days to make sure</p> <p>14 that they understood the classroom training and</p> <p>15 practical experience. And then after possibly a</p> <p>16 week to 10 days they might be in their own category</p> <p>17 with business while being monitored by the manager.</p> <p>18 Q. Do the collectors get paid on commission</p> <p>19 based on how much they collect from consumers?</p> <p>20 A. The collectors for the most part are paid</p> <p>21 on an hourly wage and they can earn commissions if</p> <p>22 they achieve certain thresholds in collection</p> <p>23 dollars. So they have the opportunity to earn a</p>
<p style="text-align: right;">18</p> <p>1 what we should not do. We send letters to the</p> <p>2 consumer. We don't send letters to third parties.</p> <p>3 Q. And could you give a general description of</p> <p>4 the training done to ensure that does not take</p> <p>5 place, if there is any?</p> <p>6 A. Well, our debt is owed by a specific</p> <p>7 consumer and correspondence would be directed to</p> <p>8 that consumer regarding that debt. So that's basic</p> <p>9 training. We do not, the only communication with</p> <p>10 the third party would be for location information.</p> <p>11 And that's not done by the mail. That's done by a</p> <p>12 phone call.</p> <p>13 Q. And what type of training is done to the</p> <p>14 collectors? I mean are there seminars, guidebooks?</p> <p>15 MR. SCHWARTZ: Objection as to form.</p> <p>16 You can answer if you can.</p> <p>17 A. The collectors go through formal training</p> <p>18 when they're hired. They go through periodic</p> <p>19 training. They go through monitoring and audits on</p> <p>20 phone calls. So the training starts from day 1.</p> <p>21 It's an ongoing process as long as they're an</p> <p>22 employee of the company. It's a combination of</p> <p>23 classroom. It's a combination of instructions from</p>	<p style="text-align: right;">20</p> <p>1 bonus if they achieve a certain threshold.</p> <p>2 Q. Now you said that the letters were not</p> <p>3 drafted by collectors. Who does draft the letters?</p> <p>4 A. The letters are already drafted. There is</p> <p>5 no, nothing is created. Letters are already</p> <p>6 formatted, and when a consumer's account is assigned</p> <p>7 to us, then we initiate letter 1 to send to the</p> <p>8 consumer. So the letter is already formatted. We</p> <p>9 are just putting in the name of the consumer into a</p> <p>10 pre-formatted electronic transmission and it's sent</p> <p>11 out by the person that manages the letters. So the</p> <p>12 collector doesn't send letters.</p> <p>13 Q. But you say that the letters were already</p> <p>14 drafted. Who is it, without revealing any trade</p> <p>15 secret or anything, who is it who drafts this</p> <p>16 letter?</p> <p>17 A. The compliance department has the ultimate</p> <p>18 approval of the letter. Whether, we have numerous</p> <p>19 letters. I can't say every letter was created by</p> <p>20 compliance, but every letter is approved by</p> <p>21 compliance. There is occasions when our operations</p> <p>22 group will want to create a new letter based on a</p> <p>23 request from a client, but compliance has to approve</p>

<p style="text-align: right;">21</p> <p>1 it before it can be put into the system.</p> <p>2 Q. And your clients, those are the third party</p> <p>3 creditors for which EOS CCA collects?</p> <p>4 A. Yes.</p> <p>5 Q. You said that you put in the name and</p> <p>6 address of the consumers. How do you get these</p> <p>7 names and how do you get these addresses?</p> <p>8 A. When the accounts are placed with us, from</p> <p>9 the client, they give us an electronic file which</p> <p>10 identifies that information. It's among the fields</p> <p>11 of information that they would supply to us.</p> <p>12 Q. Are there times where EOS CCA changes a</p> <p>13 name or an address, for instance someone gets</p> <p>14 married or someone moves?</p> <p>15 A. Yes. The files are updated with any</p> <p>16 current information that would make the file</p> <p>17 accurate.</p> <p>18 Q. And who is it that updates the files?</p> <p>19 A. That information is sometimes done</p> <p>20 automatically through the database information we</p> <p>21 have, or if the information comes to a specific</p> <p>22 collector, that collector may make the update on the</p> <p>23 account.</p>	<p style="text-align: right;">23</p> <p>1 done through an automated process. The collectors</p> <p>2 are answering phone calls, making some phone calls,</p> <p>3 and doing that aspect of it. But as far as the skip</p> <p>4 tracing and the sending of letters, that information</p> <p>5 is done more as an automated process.</p> <p>6 Q. Can you describe this automated process?</p> <p>7 A. The information is sent to a database that</p> <p>8 would determine if there is no address associated</p> <p>9 with the account it might look up an address, try to</p> <p>10 identify an address or a phone number. It goes</p> <p>11 through the databases that are available in order to</p> <p>12 provide current and accurate information on the</p> <p>13 consumer.</p> <p>14 Q. Now are there live people associated with</p> <p>15 this automated database, or is it strictly</p> <p>16 computerized?</p> <p>17 A. Well live people run the computers and they</p> <p>18 have to process the files. But the information is</p> <p>19 sent out in an electronic format to the vendor who</p> <p>20 updates the information, and the updated information</p> <p>21 populates the individual accounts.</p> <p>22 Q. Are there people that verify the accuracy</p> <p>23 of this information.</p>
<p style="text-align: right;">22</p> <p>1 Q. And does EOS CCA use Lexis or any kind of</p> <p>2 skip tracing technology to locate consumers?</p> <p>3 A. Yes.</p> <p>4 Q. And they look up their address in doing so?</p> <p>5 MR. SCHWARTZ: Objection as to form.</p> <p>6 Q. Do they look up the address, do the</p> <p>7 collectors who are making changes and locating</p> <p>8 consumers, do they search for the address when using</p> <p>9 the skip tracing technology?</p> <p>10 A. I guess in some form. I don't quite</p> <p>11 understand your question. Ask that question again.</p> <p>12 Q. Sorry about that. What programs do</p> <p>13 employees and representatives of EOS CCA use when</p> <p>14 trying to locate a consumer's address?</p> <p>15 A. The accounts are sent out to an outside</p> <p>16 vending source that would verify whether the address</p> <p>17 that is associated with the account is a valid</p> <p>18 address for the individual who is named as the</p> <p>19 account owner.</p> <p>20 Q. So it's not EOS CCA employees that look</p> <p>21 into this whether the address is correct?</p> <p>22 A. No. The employees, the skip tracing, the</p> <p>23 sending of letters, the validating of information is</p>	<p style="text-align: right;">24</p> <p>1 A. We don't know the accuracy of it until, if</p> <p>2 we're given a phone number or address, we don't know</p> <p>3 until someone responds to that, either by telling us</p> <p>4 on a phone call that we have got a wrong number or</p> <p>5 if we have a letter that is gone to a wrong address</p> <p>6 someone calls us and says we're sending it to a</p> <p>7 wrong address. There is no way to verify before you</p> <p>8 send it out.</p> <p>9 Q. There is no way of verifying it before you</p> <p>10 send it out?</p> <p>11 A. We have millions of accounts. We're not</p> <p>12 sitting on phones trying to verify the information.</p> <p>13 We are relying upon the databases that provide us</p> <p>14 with the current information. It's their job,</p> <p>15 that's what their company does. So we rely upon</p> <p>16 their information as a good information to follow up</p> <p>17 on the accounts until we find out otherwise.</p> <p>18 Q. What company is this, this vendor that does</p> <p>19 this?</p> <p>20 A. There is different processes that are being</p> <p>21 done. Which process in particular are you talking</p> <p>22 about?</p> <p>23 Q. The company that does the address location</p>

<p style="text-align: right;">25</p> <p>1 and verification for consumers?</p> <p>2 A. That's done through our mailing company.</p> <p>3 That Metro Media. I'm not sure of the exact name of</p> <p>4 the company. But the letter vendor, when we provide</p> <p>5 the file to them they run it through their database</p> <p>6 to see if there has been a change of address or see</p> <p>7 if the address is still valid through the U.S.</p> <p>8 Postal Service database.</p> <p>9 Q. And when someone calls to say that a phone</p> <p>10 number or an address is incorrect, then it would be</p> <p>11 an EOS CCA employee that would make that change?</p> <p>12 A. That's correct.</p> <p>13 Q. And you said that EOS CCA has millions of</p> <p>14 accounts. Those accounts are all debt with some</p> <p>15 form, correct?</p> <p>16 A. Yes.</p> <p>17 Q. So EOS CCA collects millions of debts per</p> <p>18 year?</p> <p>19 A. Collect as many as we can.</p> <p>20 Q. Attempts to collect millions of debts a</p> <p>21 year?</p> <p>22 A. Yes.</p> <p>23 Q. Can you approximate how many accounts EOS</p>	<p style="text-align: right;">27</p> <p>1 types of arrangements that are made with each of the</p> <p>2 clients.</p> <p>3 Q. Now, you said that, to backtrack a little</p> <p>4 bit, you said that you don't know if an account's</p> <p>5 information regarding an address is incorrect unless</p> <p>6 someone calls and says this. Does that mean that</p> <p>7 there are no safeguards to assure that letters are</p> <p>8 not sent out to the wrong address?</p> <p>9 A. Well, the safeguard is we're using a vendor</p> <p>10 who has validated address information through the</p> <p>11 sources that are available to provide us with the</p> <p>12 information. So that's our safeguard is that we're</p> <p>13 not you're just sending the letters out blindly. We</p> <p>14 are sending the letters out based on information</p> <p>15 that has been provided by the client, or if that</p> <p>16 information proves to be inaccurate information</p> <p>17 provided by one of the companies that specializes in</p> <p>18 providing accurate addresses on consumers.</p> <p>19 Q. Now to go to this, are there also, I know</p> <p>20 that you probably have multiple consumers or files</p> <p>21 with the same name. What does EOS CCA do to assure</p> <p>22 that accounts with the same, where the consumer has</p> <p>23 a name that is the same as another consumer, what is</p>
<p style="text-align: right;">26</p> <p>1 CCA has, again without revealing any trade secrets?</p> <p>2 MR. SCHWARTZ: Objection to form.</p> <p>3 A. Active accounts.</p> <p>4 MR. SCHWARTZ: Objection as to form. I</p> <p>5 mean what time frame?</p> <p>6 Q. In a year. I'm sorry. I was not specific.</p> <p>7 A. Well, on an annual basis, the company may</p> <p>8 receive 7 million in new accounts representing \$6.8</p> <p>9 billion dollars in debt that is owed.</p> <p>10 Q. And if unsuccessful in collecting, I guess</p> <p>11 EOS CCA only owns about 5 percent of the debts,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And EOS CCA gets paid based on commission</p> <p>15 for its clients?</p> <p>16 A. In some cases. There is other ways but</p> <p>17 that's one way.</p> <p>18 Q. What other ways are there?</p> <p>19 A. We may get paid on a per account basis for</p> <p>20 sending out a notice on behalf of a client. We</p> <p>21 might provide staffing on site for a client project</p> <p>22 where we get paid by the hour of the individual who</p> <p>23 is providing the service. So there is different</p>	<p style="text-align: right;">28</p> <p>1 done to keep the respective files or accounts</p> <p>2 unique? I know that was a long question.</p> <p>3 A. I understand. For the most part when a</p> <p>4 contact is made with the consumer, before</p> <p>5 conversation is initiated relative to the debt, the</p> <p>6 collector will verify that they have the right</p> <p>7 consumer, usually by asking them if the last four</p> <p>8 digits of their Social Security number is whatever</p> <p>9 the number is, and then if they verify it and</p> <p>10 indicate that yes, that is my Social, then they</p> <p>11 assume they have the correct person.</p> <p>12 Q. Now does EOS CCA have the entire Social</p> <p>13 Security numbers of consumers or just the last four</p> <p>14 digits?</p> <p>15 A. Usually the entire number but not all</p> <p>16 clients capture that information. So that can vary.</p> <p>17 Q. But you almost always have the last four</p> <p>18 digits, at least?</p> <p>19 A. Yes. Most circumstances we have the whole</p> <p>20 number.</p> <p>21 Q. What do you do to assure that you have the</p> <p>22 correct prefixes and suffixes, such as junior,</p> <p>23 senior, et cetera?</p>

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1 A. We take the information that was provided
2 by the consumer to the creditor in setting up the
3 account and assume that they provided accurate
4 information.

5 Q. But there are times where your client takes
6 down the information, correctly?

7 A. I don't know that. You're speculating. I
8 don't know that for a fact.

9 Q. You don't know of any times where any of
10 your clients have taken down information
11 incorrectly?

12 A. I don't personally know of that, no.

13 Q. To go to the specific obvious specific
14 account that is underlying the current FDCPA case,
15 you're familiar with the Gary Christy account?

16 A. Yes.

17 Q. And you are familiar with this June 14th,
18 2011, letter?

19 A. Yes.

20 Q. I am going to ask that this be marked EOS
21 CCA 1.

22 (Exhibit No. 1

23 Letter/Notice of Collection

30

1 Placement was marked for
2 Identification.)

3 Q. This letter it's for the client AT&T
4 Mobility, correct?

5 A. Yes.

6 Q. How did this account come to EOS CCA?

7 MR. SCHWARTZ: I am going to object at
8 this point. I am going to object because 1, the
9 plaintiff in this case is not the debtor. And as
10 far as if we start disclosing any information
11 relating to the debtor, that would become a
12 violation of the FDCPA. We don't have one at
13 present.

14 So if you want a general description of
15 how these AT&T Mobility accounts come to EOS CCA,
16 that's fine. But if you're asking specific as to
17 the debtor Gary Christy, then I am going to have to
18 assert an objection and instruct my client not to
19 answer out of concern that they will violate 1692 C.

20 MR. GINSBURG: Understood. That's
21 fair. We are only asking for general information
22 about how AT&T Mobility accounts such as this end up
23 in the possession or as a client for EOS CCA.

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1 A. Would you ask your question again, please?

2 Q. Sure. How does EOS CCA obtain AT&T
3 Mobility accounts?

4 A. There is an electronic transmission from
5 their office to our office which is in a file format
6 that identifies various characteristics of
7 information or various pieces of information
8 relative to the account so that we can initiate
9 collection activity.

10 Q. And in those situations does EOS CCA get
11 the name as it was provided, or do they get the name
12 from the client?

13 A. Yes. The client supplies us with the
14 information at the time of the placement which would
15 include the name as appears on the account set up by
16 the consumer.

17 Q. Does it also include the address?

18 A. It includes, one of the fields is for an
19 address, yes.

20 Q. And what are some of the other fields?

21 A. Social Security number, telephone number,
22 general information of that type, when the account
23 was -- the last payment date on the account, the

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1 service date, any information relative to the
2 account that would be of value for us in contacting
3 the individual.

4 Q. And in this case or in these cases AT&T
5 Mobility is still the creditor, correct?

6 A. That's correct.

7 Q. But these accounts are in default?

8 A. They place the account with us after the
9 account has not been paid for a certain period of
10 time.

11 MR. SCHWARTZ: Let me put an objection,
12 just put an objection as to form. I think the term
13 default has got a number of different meanings. You
14 can answer as to the best of your ability.

15 A. I don't know whether they deem them to be
16 in default or whether they just deem them to be past
17 due. Default is more of a legal term. You have to
18 ask them as to whether they consider them in
19 default. But the service has been in these cases
20 the service has been terminated and the bill had
21 gone unpaid for a period of time, and then it gets
22 assigned to us for the collection.

23 Q. In the letter that has been marked as EOS 1

<p style="text-align: right;">33</p> <p>1 do you see that it was addressed to Gary Christy at</p> <p>2 30 East Butler Ave., in Ambler, Pennsylvania?</p> <p>3 A. Yes.</p> <p>4 Q. Now without revealing any confidential</p> <p>5 information pertaining to the debtor or consumer's</p> <p>6 account, how did EOS CCA get this address?</p> <p>7 A. The address was supplied by one of our skip</p> <p>8 trace vendors that provided the address as a</p> <p>9 potentially good address for the individual named.</p> <p>10 Q. So was the original address incorrect or</p> <p>11 presumed to be incorrect?</p> <p>12 A. The original address that was associated</p> <p>13 with the account was identified as not being a valid</p> <p>14 address for the person of that name. Therefore, the</p> <p>15 skip trace process identified a new address as being</p> <p>16 a good address.</p> <p>17 Q. And that was a skip trace, that skip trace</p> <p>18 process that was done that was done in-house rather</p> <p>19 than by a third party vendor?</p> <p>20 A. No. It's done, most skip trace is done by</p> <p>21 third-party vendors.</p> <p>22 Q. And was that the same company, metro media?</p> <p>23 A. No. That company provides the letters.</p>	<p style="text-align: right;">35</p> <p>1 words what do you mean by matching up?</p> <p>2 A. Well, the mailing house has all of the</p> <p>3 addresses throughout the United States, and when a</p> <p>4 name does not associate with an address, or the</p> <p>5 address doesn't exist or we're given a partial</p> <p>6 address or anything that would mean that the letter</p> <p>7 was not going to be delivered, it would come back to</p> <p>8 us as a file saying that there is either incomplete</p> <p>9 information, inaccurate information, so that we</p> <p>10 would not go to the expense of sending out a letter</p> <p>11 at the cost of the letter to an address where it's</p> <p>12 not going to get delivered or it's unlikely to get</p> <p>13 delivered because it's incomplete or inaccurate or</p> <p>14 doesn't associate with the name that has been</p> <p>15 identified with the account. So any -- okay.</p> <p>16 Q. All right. You can finish, Mr. Burns. I'm</p> <p>17 sorry.</p> <p>18 A. I was going to say any time that the file</p> <p>19 is incomplete and we can't send it out, it goes out</p> <p>20 to be validated and verified through the LexisNexis</p> <p>21 database.</p> <p>22 Q. And the answer to the complaint filed by</p> <p>23 Mr. Christy, which the answer was filed on October</p>
<p style="text-align: right;">34</p> <p>1 The company that does the bulk of the skip trace</p> <p>2 work for us is a company called LexisNexis.</p> <p>3 Q. Now does EOS CCA have a LexisNexis account?</p> <p>4 A. Yes.</p> <p>5 Q. So there are individuals working for EOS</p> <p>6 CCA who enter this information into LexisNexis?</p> <p>7 A. The information is done on an automated</p> <p>8 basis. So it's not an individual saying I am going</p> <p>9 to send this account over. They're sent over in</p> <p>10 batches.</p> <p>11 Q. So how is this address identified, the</p> <p>12 original address that EOS has, how is that</p> <p>13 identified as being incorrect?</p> <p>14 A. I'm not certain. I can never tell from the</p> <p>15 documents, other than when they do the address</p> <p>16 verification prior to sending these notices out,</p> <p>17 they will send back accounts that don't match up.</p> <p>18 So I'm assuming that that was the case here,</p> <p>19 although I can't be a hundred percent certain of</p> <p>20 that. But I'm assuming that that is the case here</p> <p>21 because that is usually what, usually what happened.</p> <p>22 Q. What determines, you said it didn't match</p> <p>23 up. What determines if it does match up in other</p>	<p style="text-align: right;">36</p> <p>1 10th, 2011, I ask that that be marked EOS 2.</p> <p>2 MR. GINSBURG: Answer filed by EOS, by</p> <p>3 the way.</p> <p>4 (Exhibit No. 2 Answer to</p> <p>5 Plaintiff's Complaint with</p> <p>6 Affirmative Defenses by</p> <p>7 Defendant was marked for</p> <p>8 Identification.)</p> <p>9 Q. Now for Paragraphs 19, on Page 5 of the</p> <p>10 Answer, the second sentence reads, "EOS CCA admits</p> <p>11 and its records reflect that on or about June 14th,</p> <p>12 2011, it addressed and sent a collection letter to</p> <p>13 Gary Christy at an address provided by AT&T</p> <p>14 Mobility." Now I read that correctly, didn't I?</p> <p>15 A. Yes.</p> <p>16 Q. That contradicts the statement that the</p> <p>17 address was found by a LexisNexis search, doesn't</p> <p>18 it?</p> <p>19 MR. SCHWARTZ: I am going to object to</p> <p>20 that because again you're asking a question about</p> <p>21 letters and at that time we didn't have a copy of.</p> <p>22 It was supposed to have been attached as an exhibit</p> <p>23 as you can see the remaining response, and I don't</p>

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1 mean to testify, but I think that's being a little,
2 frankly I think it's a little disingenuous where you
3 are asking, we don't have an original copy of the
4 letter. We have templates. So asking us to define
5 the contents of the letter without providing it in
6 the complaint, I think the argument is if there was
7 a mistake it was made by counsel we can correct it,
8 but it's based on the fact we didn't have the
9 information because it wasn't provided by the
10 plaintiff.

11 **Q.** The answer says that its records reflect
12 that it was addressed and sent based on an address
13 provided by AT&T Mobility. What was the basis and
14 what records reflect that this address was provided
15 by AT&T Mobility?

16 **A.** The records that when the account was
17 placed with us, there was an address that was
18 provided with the account. And the process, when
19 the process gets started to send letters, it's based
20 upon the letter that is provided by AT&T Mobility.
21 If in the process of that letter being sent it's
22 determined that it is not going to arrive at the
23 right place or it's an incomplete address, then the

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1 data system, the skip tracing system is automated.
2 It then goes through the skip trace to get a good
3 address based on the preliminary information
4 provided by the client. So that it would be mailed
5 to a more likely location where the consumer is
6 located.

7 So the process is started with the
8 information provided by AT&T Mobility. It's just
9 when the end product goes out the door it may have
10 gone through different processes that update and
11 modify the information before it is actually sent
12 out the door.

13 **Q.** The statement that or the portion of the
14 statement which says on or about June 14, 2011, it
15 addressed and sent a collection letter to Gary
16 Christy at an address provided by AT&T Mobility.
17 That statement is incorrect, isn't it?

18 **A.** No. I think the letter process was started
19 and the address provided by AT&T Mobility was the
20 address that was utilized. What I'm saying,
21 letters, we might send a thousand letters to the
22 letter vendor, but they'll send a hundred back to us
23 saying that there is incomplete or inaccurate

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1 information. So we're not going to send these. So
2 you're not bearing the cost of that.

3 Then those automatically go to the
4 LexisNexis for address verification and update.
5 It's not some individual looking at the letter
6 saying, I will do this, cross this out and change
7 that. It's all done on an automated basis. When we
8 say we're sending a letter out based on the address
9 by Mobility that was the starting point. It's just
10 when the end product goes out the door at the mail
11 house it may have been modified because of new
12 information that would have corrected the
13 information that was with the account.

14 **Q.** But this particular address was not
15 provided by AT&T Mobility, correct?

16 **A.** That's correct.

17 **Q.** Do you have a copy of the skip trace that
18 was done for Mr. Christy's account?

19 **A.** No.

20 **Q.** For this letter that was sent?

21 **A.** No.

22 **Q.** Would it be possible to obtain such a copy?

23 **A.** I don't know if a copy exists. You say

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1 copy. All this is done electronically. So I don't,
2 I'm not familiar enough with the process to tell you
3 that there is a copy of a document.

4 **Q.** This letter was sent to 30 East Butler Ave.
5 in Ambler, Pennsylvania. Do you have any idea, do
6 you know what 30 East Butler Avenue is?

7 **A.** Yes.

8 **Q.** And what is your understanding of what is
9 located at 30 East Butler Ave?

10 **A.** Your law office.

11 **Q.** Which is Kimmel & Silverman?

12 **A.** Yes.

13 **Q.** And you understand that this is a business
14 address not a residential address?

15 **A.** I don't know that, but if you're saying
16 that, I have no reason to not agree with that.

17 **Q.** Are you aware that Gary Christy has never
18 lived at this address?

19 **A.** I don't know.

20 **Q.** Do you have any idea why this address
21 showed up as an address in the Lexis search as a
22 possible address to which, at which to reach the
23 consumer?

<p style="text-align: right;">41</p> <p>1 A. I don't know how it did. I mean I can give</p> <p>2 theories, but I don't know exactly how it came to be</p> <p>3 that that was the address.</p> <p>4 Q. What would be something that you would</p> <p>5 guess or theorize?</p> <p>6 A. In the database that LexisNexis utilizes,</p> <p>7 the Gary Christy name appears, and apparently there</p> <p>8 is a senior and a junior Gary Christy, and in trying</p> <p>9 to identify a location for one of those Gary</p> <p>10 Christies it may have used information for Gary</p> <p>11 Christy Senior and in some information that either</p> <p>12 on his credit report or in any other source document</p> <p>13 that is used by this search, his wife's name might</p> <p>14 have been associated and she has a business address,</p> <p>15 I can only speculate. I don't know the exact</p> <p>16 process by which they can identify all the</p> <p>17 information they identify.</p> <p>18 Q. Fine. Thank you. Would it be all right if</p> <p>19 we took a five-minute break now?</p> <p>20 A. Sure.</p> <p>21 MR. SCHWARTZ: Sure.</p> <p>22 (Recess)</p> <p>23 MR. GINSBURG: Back on the record.</p>	<p style="text-align: right;">43</p> <p>1 time that, it was well after the complaint had been</p> <p>2 filed and the case had been settled. So when I was</p> <p>3 answering your question I was answering it relative</p> <p>4 to the time frame. But Andrew pointed out I should</p> <p>5 mention that we did eventually obtain that</p> <p>6 information sometime after the fact.</p> <p>7 Q. Okay. Thank you. Now I am going to go</p> <p>8 over, I have a few more questions that shouldn't</p> <p>9 take much longer. I will jump around a lot, just</p> <p>10 things that I didn't get in the first hour of the</p> <p>11 deposition. So forgive me if I am confusing with</p> <p>12 the questions as far as the order that they're</p> <p>13 asked.</p> <p>14 But going back to the June 14th, 2001</p> <p>15 letter, you mentioned that some of your letters are</p> <p>16 drafted by compliance. They're sent out by third</p> <p>17 party vendors. Without disclosing confidential</p> <p>18 information about this particular debtor, which</p> <p>19 company or which entity was it that drafted this</p> <p>20 letter?</p> <p>21 A. This is a standard letter that our company</p> <p>22 uses for, it's called the first letter is what we</p> <p>23 characterize it as. The letters are drafted by us,</p>
<p style="text-align: right;">42</p> <p>1 MR. SCHWARTZ: During the break, this</p> <p>2 is Andrew Schwartz, during the break I confirmed</p> <p>3 with Mr. Burns that I didn't think he maybe</p> <p>4 understood a question completely regarding the</p> <p>5 public record information. And so the answer he</p> <p>6 gave you, he would like the opportunity to clarify</p> <p>7 his response with respect to those records.</p> <p>8 Mr. Burns go ahead.</p> <p>9 A. The question was about the information from</p> <p>10 LexisNexis. And I think you asked something about</p> <p>11 did you have information showing the address. I</p> <p>12 can't remember how it was exactly phrased, but I</p> <p>13 know I answered that we do not have the information</p> <p>14 from LexisNexis, but I was referring to the time</p> <p>15 that we sent the letter out not subsequent to that</p> <p>16 as part of our research in this particular case. We</p> <p>17 did go to LexisNexis to get, to pull a printed copy</p> <p>18 of information relative to the account which we</p> <p>19 don't do in the normal course of handling the</p> <p>20 accounts. But if we go back on a research basis,</p> <p>21 our analyst pulled out the information to show and</p> <p>22 see what the address was that they had provided. So</p> <p>23 we did pull that information but it was after the</p>	<p style="text-align: right;">44</p> <p>1 reviewed by counsel. It's again compliance has to</p> <p>2 sign off. There is a process to have a letter to be</p> <p>3 used.</p> <p>4 Q. Was there a third party who mailed this</p> <p>5 letter out, or was it done within EOS CCA?</p> <p>6 A. No. The mail providers send the letters</p> <p>7 out. We don't see them. We don't process them.</p> <p>8 Q. Who is this mail processor?</p> <p>9 A. Again I don't recall the exact name. I</p> <p>10 thought it was Metro, something to be honest with</p> <p>11 you. I don't recall the exact name of the provider.</p> <p>12 I don't get involved in that part of the process. I</p> <p>13 used to years ago, but I do not now. So I'm not</p> <p>14 familiar with the current vendor.</p> <p>15 Q. But it is a third party company that mails</p> <p>16 out the letters?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Now was this debt, again without</p> <p>19 going into the confidential nature or information</p> <p>20 about it, you mentioned that your debts are, the</p> <p>21 debts owned by EOS CCA they are mostly personal and</p> <p>22 mostly consumer in nature?</p> <p>23 MR. SCHWARTZ: Objection as to form.</p>

<p style="text-align: right;">45</p> <p>1 You started that off -- can you reask the question.</p> <p>2 Q. Yes. This debt --</p> <p>3 MR. SCHWARTZ: Sorry to interrupt are</p> <p>4 you talking about this particular AT&T Mobility debt</p> <p>5 or just in general. That's the question.</p> <p>6 MR. GINSBURG: I was going to ask both.</p> <p>7 Q. The AT&T Mobility debt that EOS CCA</p> <p>8 collects, are they categorized exclusively as being</p> <p>9 personal?</p> <p>10 A. No.</p> <p>11 Q. So some are personal and some are business?</p> <p>12 A. Yes.</p> <p>13 Q. Now this account was this categorized as a</p> <p>14 personal or business account?</p> <p>15 A. I believe it would be a personal account.</p> <p>16 Q. Are you certain of this or you just</p> <p>17 believe?</p> <p>18 A. I believe. I have to verify in our system,</p> <p>19 but I have no reason to believe it's classified as a</p> <p>20 commercial account.</p> <p>21 Q. Are there different letters that are sent</p> <p>22 out for commercial accounts than there are for</p> <p>23 personal accounts?</p>	<p style="text-align: right;">47</p> <p>1 of the FDCPA which EOS CCA denies was not</p> <p>2 intentional and resulted from a bona fide error</p> <p>3 notwithstanding the maintenance of procedures</p> <p>4 reasonably adapted to avoid such errors." Did I</p> <p>5 read that correctly?</p> <p>6 A. I don't have a copy of it in front of me.</p> <p>7 It wasn't on the information that I was, that I have</p> <p>8 immediately in front of me.</p> <p>9 Q. This was the document marked EOS 2. This</p> <p>10 was for the answer filed.</p> <p>11 A. Okay.</p> <p>12 Q. Only Page 9.</p> <p>13 A. I was looking at the wrong document.</p> <p>14 Q. That's fine.</p> <p>15 A. Okay. I have page 9.</p> <p>16 Q. I will read it over again. "Any violation</p> <p>17 of the FDCPA which EOS CCA denies was not</p> <p>18 intentional and resulted from a bona fide error</p> <p>19 notwithstanding the maintenance of procedures</p> <p>20 reasonably adapted to avoid such error." Did I read</p> <p>21 that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. Now what is your understanding of the</p>
<p style="text-align: right;">46</p> <p>1 A. Not for this particular circumstance.</p> <p>2 Q. This particular circumstance meaning what?</p> <p>3 A. Meaning this client and this category of</p> <p>4 business.</p> <p>5 Q. And what do you mean this category of</p> <p>6 business?</p> <p>7 A. There are certain times when they'll</p> <p>8 identify files to us as being solely commercial and</p> <p>9 so those might have a separate method of being</p> <p>10 handled, but in the normal placement of business,</p> <p>11 they can give us these accounts. We assume that</p> <p>12 they're consumer. We might find out after the fact</p> <p>13 that it was a real estate broker that uses her cell</p> <p>14 phone for business purposes and that the majority of</p> <p>15 the debt was for a business or commercial purpose,</p> <p>16 but the treatment as far as the letters and the</p> <p>17 tactics and the strategy are handled as if it were a</p> <p>18 consumer account.</p> <p>19 Q. That answers the question. Now I am going</p> <p>20 to refer you to the Answer and Affirmative Defenses</p> <p>21 which EOS filed on October 10th. Now for</p> <p>22 affirmative, it is the second affirmative defense.</p> <p>23 It's on Page 9 I believe. It reads, "Any violation</p>	<p style="text-align: right;">48</p> <p>1 phrase that this resulted from a bona fide error?</p> <p>2 A. Well my understanding --</p> <p>3 Q. I know you're not a lawyer.</p> <p>4 A. Right. My understanding is that a bona</p> <p>5 fide error arises when you follow a procedure</p> <p>6 assuming that you are doing it correctly and it</p> <p>7 turns out that it was not correct but you had no</p> <p>8 intention upon, you had no intention upon doing</p> <p>9 whatever it was that is the subject of the matter.</p> <p>10 So the error arises when you follow a</p> <p>11 procedure which you believe is valid and which you</p> <p>12 understood to be accurate but the result is</p> <p>13 something that turns out to be erroneous.</p> <p>14 Q. And after it says bona fide error it says</p> <p>15 notwithstanding the maintenance of procedures</p> <p>16 reasonably adapted to avoid such error?</p> <p>17 A. Right.</p> <p>18 Q. So it's your position that EOS CCA has</p> <p>19 procedures in place to avoid such error?</p> <p>20 A. Yes.</p> <p>21 Q. And what are those procedures to avoid</p> <p>22 third party disclosures?</p> <p>23 A. Again, if it's with respect to mailing the</p>

<p style="text-align: right;">49</p> <p>1 letters, we attempt to get good addresses to mail</p> <p>2 the letters. So we don't send a letter out unless</p> <p>3 we have a belief that we've got an accurate and full</p> <p>4 address, and that the letter will get delivered to</p> <p>5 the intended party.</p> <p>6 Q. Do you have any written policies pertaining</p> <p>7 to retaining addresses?</p> <p>8 A. As far as retaining addresses?</p> <p>9 Q. Retaining correct addresses?</p> <p>10 A. I don't know that it's written policy. I</p> <p>11 mean it's again, we follow the FDCPA. All of our</p> <p>12 procedures and our processes are designed to be</p> <p>13 compliant with an FDCPA. So presumably if we're</p> <p>14 mailing a letter and we've identified an address we</p> <p>15 have a reason to believe that's a good address. In</p> <p>16 circumstances where it wasn't the primary address</p> <p>17 provided by the client the information will be</p> <p>18 marked as confidential to the consumer so that when</p> <p>19 it's received if for some reason it's at an address</p> <p>20 where the consumer is not living but might be</p> <p>21 associated with, the recipient would pass it along</p> <p>22 to the appropriate party and not open it and</p> <p>23 identify or read the information in it.</p>	<p style="text-align: right;">51</p> <p>1 Q. Mr. Burns are you familiar with these</p> <p>2 responses?</p> <p>3 A. I've read them, yes.</p> <p>4 Q. Were you the person who supplied the</p> <p>5 information in this report?</p> <p>6 A. I did not directly supply the information.</p> <p>7 My staff I think researched this and prepared the</p> <p>8 information for Mr. Schwartz.</p> <p>9 Q. So it was your staff that did this. And</p> <p>10 who is, your staff meaning who?</p> <p>11 A. Meaning the vice-president of compliance,</p> <p>12 the compliance manager, our litigation manager, our</p> <p>13 compliance analyst, any possible person that might</p> <p>14 have provided some research on this particular case.</p> <p>15 Q. But you don't know offhand who it was?</p> <p>16 A. I don't know specifically who did it, no.</p> <p>17 I reviewed it, but again, I didn't prepare it. I</p> <p>18 reviewed it to see if I thought it was accurate.</p> <p>19 Q. And at the time that this was sent out to</p> <p>20 our office, it was your understanding that the</p> <p>21 information was accurate?</p> <p>22 A. Yes.</p> <p>23 Q. And have you had a chance to read these</p>
<p style="text-align: right;">50</p> <p>1 Q. But at the same time, I mean do you and</p> <p>2 other people from EOS CCA know that -- you know that</p> <p>3 these letters still could be opened if they're sent</p> <p>4 to the wrong address, correct?</p> <p>5 MR. SCHWARTZ: Objection. You can</p> <p>6 answer.</p> <p>7 A. Somebody can violate federal law and open</p> <p>8 somebody else's mail. I guess that's always a</p> <p>9 possibility. In this case a law clerk in your</p> <p>10 office opened a letter that was addressed not to her</p> <p>11 or to your firm but to Gary Christy Confidential,</p> <p>12 apparently disregarded what that said, and opened</p> <p>13 the letter. So anything is possible I guess.</p> <p>14 Q. All right. Now, I am going to refer you to</p> <p>15 the answers and objections to Gary Christy's</p> <p>16 interrogatories of the discovery responses, and I</p> <p>17 ask they be marked EOS 3?</p> <p>18 (Exhibit No. 3 Defendant</p> <p>19 EOS CCA's Answers and</p> <p>20 Objections to Plaintiff</p> <p>21 Gary Christy's</p> <p>22 Interrogatories was marked</p> <p>23 for Identification.)</p>	<p style="text-align: right;">52</p> <p>1 today or recently?</p> <p>2 A. I didn't read it today or within the past</p> <p>3 week.</p> <p>4 Q. But to the best of your understanding, is</p> <p>5 this information still accurate?</p> <p>6 A. As far as I know when I read it I thought</p> <p>7 it was accurate, but again, you know that's, as far</p> <p>8 as I know it's accurate.</p> <p>9 Q. Now I am going to refer you to</p> <p>10 Interrogatory No. 4, Page 6 of EOS 3. It says here,</p> <p>11 "Identify and describe with particularity all</p> <p>12 training that defendant provides or receives in the</p> <p>13 area of debt collection activities including but not</p> <p>14 limited to the training content, timing and</p> <p>15 duration; all documents and audio or visual</p> <p>16 materials used in such training; and each person</p> <p>17 involved in providing such training." Is my reading</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And EOS CCA objected to this interrogatory</p> <p>21 as overly broad unduly burdensome and not reasonably</p> <p>22 calculated to lead to admissible evidence. And it's</p> <p>23 intended to harass and oppress EOS CCA.</p>

<p style="text-align: right;">53</p> <p>1 Now it's your position that this</p> <p>2 question is not relevant?</p> <p>3 MR. SCHWARTZ: You're asking him to</p> <p>4 draw a legal conclusion. The objections were</p> <p>5 drafted by counsel. I object as to form. If he can</p> <p>6 answer he can.</p> <p>7 A. No. I agree with what counsel wrote as his</p> <p>8 answer.</p> <p>9 Q. So you think that this -- but you also</p> <p>10 raised as an affirmative defense that any violation</p> <p>11 was a result of a bona fide error notwithstanding</p> <p>12 the maintenance of procedures reasonably adapted?</p> <p>13 MR. SCHWARTZ: Again objection. I</p> <p>14 think you're misreading that defense. I'm sorry.</p> <p>15 You're misreading the defense. Denying any</p> <p>16 violation but --</p> <p>17 MR. GINSBURG: I understand.</p> <p>18 MR. SCHWARTZ: That's all I'm asking,</p> <p>19 if you read it accurately because you're reading it</p> <p>20 as if we're conceding it was a bone fide error, when</p> <p>21 it wasn't.</p> <p>22 Q. Any violation of the FDCPA which EOS CCA</p> <p>23 denies was not intentional and resulted from a bona</p>	<p style="text-align: right;">55</p> <p>1 you can go ahead.</p> <p>2 A. Well, again, we want to identify and</p> <p>3 describe the training content, timing and duration,</p> <p>4 that I could talk for the next three hours about</p> <p>5 everything that is involved in training. I think</p> <p>6 it's, you know, what specific to this particular</p> <p>7 case. I think our objection to this and our answer</p> <p>8 to this is accurate. I have nothing further to add.</p> <p>9 Q. I think the training has already been</p> <p>10 described as to the letter writing so I'll back off</p> <p>11 that question. I understand.</p> <p>12 Moving on to another subject as being</p> <p>13 in charge of compliance, regulatory compliance, have</p> <p>14 there been complaints filed against either formal</p> <p>15 court complaints or something like the Better</p> <p>16 Business Bureau about third party disclosures by</p> <p>17 EOS CCA in the past year?</p> <p>18 MR. SCHWARTZ: Objection as to form.</p> <p>19 You can answer if you can.</p> <p>20 A. I believe there are. I don't, again,</p> <p>21 remember the content of each complaint, so</p> <p>22 whether -- yes, there have been complaints filed</p> <p>23 with the Better Business Bureau in the past year,</p>
<p style="text-align: right;">54</p> <p>1 fide error notwithstanding the maintenance of</p> <p>2 procedures reasonably adapted to avoid such error.</p> <p>3 MR. SCHWARTZ: Better.</p> <p>4 Q. I know that EOS CCA denies all wrongdoing</p> <p>5 but also says that procedures are in place to avoid</p> <p>6 any FDCPA violation, correct?</p> <p>7 A. That is correct.</p> <p>8 Q. But here in the interrogatory EOS objects</p> <p>9 to a description of training including legal</p> <p>10 training as overly broad unduly burdensome and not</p> <p>11 reasonably calculated to admissible evidence. So</p> <p>12 what I'm getting at is how can you say that this</p> <p>13 discovery request is not relevant when at the same</p> <p>14 time saying that procedures are in place to avoid</p> <p>15 such errors?</p> <p>16 MR. SCHWARTZ: Again I'll put an</p> <p>17 objection as to form. He is asking questions about</p> <p>18 legal conclusions from a non-attorney and there</p> <p>19 isn't a motion pending with respect to the</p> <p>20 sufficiency of the response. So I have a number of</p> <p>21 problems with the question you're asking right now.</p> <p>22 But if he can answer it. I think he already has</p> <p>23 answered it, but if he can answer it, please. If</p>	<p style="text-align: right;">56</p> <p>1 but whether they were specifically about third-party</p> <p>2 contact, I honestly wouldn't know that off hand. I</p> <p>3 would have to research that to give you an answer.</p> <p>4 Q. Do you know of any federal or state</p> <p>5 complaints filed against EOS CCA in the past year</p> <p>6 for third-party violations, third-party disclosure</p> <p>7 violations?</p> <p>8 A. Again my answer would be, I know that there</p> <p>9 are complaints that are filed that we addressed, but</p> <p>10 I don't remember the exact content of each complaint</p> <p>11 so that I could tell you that there were 7 of this</p> <p>12 or 8 of that. I don't have that information in</p> <p>13 front of me. I would assume there was at least 1.</p> <p>14 Q. If you don't know you don't know. How do</p> <p>15 you discipline, I would assume that employing more</p> <p>16 than a thousand collectors that there are collectors</p> <p>17 who violate that FDCPA, is that correct?</p> <p>18 A. There may be cases where that happens, yes.</p> <p>19 Q. And how are collectors who violate the</p> <p>20 FDCPA disciplined?</p> <p>21 MR. SCHWARTZ: Sorry. Objection as to</p> <p>22 form. You can answer if you can.</p> <p>23 A. If the person violates it and we feel it's</p>

<p style="text-align: right;">57</p> <p>1 a matter of training issue, then the person would be</p> <p>2 retrained by the manager and trainer, probably a</p> <p>3 written warning on the first occasion. If it</p> <p>4 happens more than once then normally the person</p> <p>5 would either be put on probation or just be fired.</p> <p>6 Q. And does this happen often, like meaning</p> <p>7 how many collectors would you estimate have been</p> <p>8 terminated in the past year for FDCPA violations?</p> <p>9 A. I don't know the number.</p> <p>10 Q. Would you say that it's been more than 10?</p> <p>11 A. I don't know the number so I don't want to</p> <p>12 guess.</p> <p>13 Q. But it has happened in the last year?</p> <p>14 A. I would imagine it does. We have a very</p> <p>15 tight training program, monitoring program, auditing</p> <p>16 program, and we have very low tolerance for people</p> <p>17 that do violate the law.</p> <p>18 Q. I have one more question which goes back to</p> <p>19 on the June 14th collection letter which was marked</p> <p>20 as EOS 1. How would you determine or someone at EOS</p> <p>21 CCA determine that this letter was in fact sent?</p> <p>22 A. How would we determine that the letter was</p> <p>23 sent? I would --</p>	<p style="text-align: right;">59</p> <p>1 Miranda notice. Those are by law required to be</p> <p>2 sent within a certain number of days.</p> <p>3 Q. Just going back now to the discovery</p> <p>4 responses. I would ask that the responses and</p> <p>5 objections to Gary Christy's Request for Production</p> <p>6 of Documents be marked as EOS 4.</p> <p>7 (Exhibit No. 4 Defendant</p> <p>8 EOS CCA's Responses and</p> <p>9 Objections to Plaintiff</p> <p>10 Gary Christy's Request for</p> <p>11 Production of Documents was</p> <p>12 marked for Identification.)</p> <p>13 Q. Mr. Burns, have you seen these responses</p> <p>14 before?</p> <p>15 A. Yes.</p> <p>16 Q. Did you approve these responses as they</p> <p>17 were sent out?</p> <p>18 A. I didn't approve them at the time that they</p> <p>19 were sent out. I reviewed the information but it</p> <p>20 wasn't, it wasn't me directly that approved the</p> <p>21 response. That was reviewed by one of the staff</p> <p>22 people in my department with our attorney.</p> <p>23 Q. Do you know again specifically which staff</p>
<p style="text-align: right;">58</p> <p>1 Q. Yes.</p> <p>2 A. There would be an indication in the</p> <p>3 collection notes for the consumer's account that a</p> <p>4 letter was requested and that a letter was sent.</p> <p>5 Q. And requested by who?</p> <p>6 A. Well, just requested by again when new</p> <p>7 business is placed there is a protocol that is</p> <p>8 followed so that notices are sent within a certain</p> <p>9 number of days on the account as part of the</p> <p>10 process. So it's done, again, automated, not done</p> <p>11 by an individual collector. It's just done on an</p> <p>12 automated basis. When a call comes in on a letter</p> <p>13 the collector answers the call or if a call is being</p> <p>14 initiated by the collector, then they talk to the</p> <p>15 consumer, but they're not involved in sending the</p> <p>16 letters out. That is done on an automated basis.</p> <p>17 Q. How is it determine which letter is sent</p> <p>18 out? Is that done on an automated basis as well?</p> <p>19 A. Yes. If this is a new placement, new</p> <p>20 account, then the so-called letter number 1 is the</p> <p>21 first notice because there is, as you know, required</p> <p>22 language that has to be provided in that initial</p> <p>23 notice including the validation clause and the mini</p>	<p style="text-align: right;">60</p> <p>1 person it was or could have been?</p> <p>2 A. I don't know exactly who it was.</p> <p>3 Q. Have you gotten a chance to look over these</p> <p>4 today or within the last week?</p> <p>5 A. I looked at them maybe a week ago.</p> <p>6 Q. And when you looked at them, did you notice</p> <p>7 anything in the responses that you would wish to</p> <p>8 change?</p> <p>9 A. I don't believe so.</p> <p>10 Q. So everything to the best of your knowledge</p> <p>11 is accurate?</p> <p>12 A. When I reviewed it I thought it was.</p> <p>13 Q. Thank you. That about wraps up my</p> <p>14 questions. Mr. Schwartz do you have anything?</p> <p>15 MR. SCHWARTZ: I actually do.</p> <p>16 <u>Cross-Examination</u></p> <p>17 Q. (By Mr. Schwartz) Mr. Burns if you could</p> <p>18 turn to what was marked as EOS 1, the June 14th,</p> <p>19 2011 letter sent to Gary Christy?</p> <p>20 A. Yes.</p> <p>21 Q. Now, in connection with the bona fide error</p> <p>22 questions that were asked of you, do you recall</p> <p>23 those questions?</p>

<p style="text-align: right;">61</p> <p>1 A. In general I do. Not specifically.</p> <p>2 Q. Okay. First let me ask you a general</p> <p>3 question. Does EOS CCA when they send out a letter</p> <p>4 is there any intent to send it to a party that is</p> <p>5 not a debtor?</p> <p>6 A. No.</p> <p>7 Q. So the intent of the letter is to get in</p> <p>8 touch with the debtor who owes the debt obligation,</p> <p>9 is that accurate?</p> <p>10 A. Yes.</p> <p>11 Q. Now you said that the address on the June</p> <p>12 14th, 2011, letter sent to Gary Christy, that the</p> <p>13 address 30 East Butler Avenue, Ambler, PA was not</p> <p>14 the address that was provided by AT&T Mobility, is</p> <p>15 that accurate?</p> <p>16 A. Yes.</p> <p>17 Q. And so as a result of a public record</p> <p>18 search the address that is on this letter, the</p> <p>19 address to which the letter was mailed to, is a</p> <p>20 result of a public records search, is that accurate?</p> <p>21 A. Well it's a result of the vendor that we</p> <p>22 use LexisNexis. However, whatever they search, I</p> <p>23 don't know their proprietary confidential processes</p>	<p style="text-align: right;">63</p> <p>1 Q. So just to make sure I understand. So your</p> <p>2 procedure with respect to this letter, what do you</p> <p>3 do to make sure that somebody else doesn't open the</p> <p>4 letter improperly?</p> <p>5 A. Once a new address is used which was not</p> <p>6 the address provided by the creditor, the letter is</p> <p>7 addressed, so it's marked confidential so that when</p> <p>8 it's received at the address it would presumably be</p> <p>9 passed on to the person who is the subject of the</p> <p>10 account.</p> <p>11 Q. Just quickly, obviously in the complaint</p> <p>12 the plaintiff, again if you don't understand, you</p> <p>13 don't recognize the statute let me know, but in the</p> <p>14 complaint the plaintiff alleges violation of the</p> <p>15 FDCPA. Are you aware of that?</p> <p>16 A. Yes.</p> <p>17 Q. And in particular they allege a violation</p> <p>18 of 1692 C and in (B) of the FDCPA by communicating</p> <p>19 with third parties in connection with the collection</p> <p>20 of the debt. Sir, are you aware of any</p> <p>21 communications by EOS CCA to a third party?</p> <p>22 A. No.</p> <p>23 Q. With respect to Gary Christy?</p>
<p style="text-align: right;">62</p> <p>1 as to where they collect their data, but they have</p> <p>2 numerous databases from which they obtain</p> <p>3 information. And if you're seeking an address or</p> <p>4 phone number they will provide you with information</p> <p>5 based on your database. So I don't know. You say</p> <p>6 public record search. I'm not certain what that</p> <p>7 means.</p> <p>8 Q. I am sorry. So your definition. But are</p> <p>9 aware of what they used to search, and I don't want</p> <p>10 you to go through specifics but with respect to Gary</p> <p>11 Christy are you aware of whether they simply plugged</p> <p>12 in a name or did they use any other information, if</p> <p>13 you're aware?</p> <p>14 A. I'm not certain what they used. We send</p> <p>15 the information that is in our file. So I don't</p> <p>16 know what they used to determine the information</p> <p>17 that they capture.</p> <p>18 Q. Now, you know that maybe that because this</p> <p>19 is not the address provided by the creditor that</p> <p>20 there is a possibility that the address you're</p> <p>21 sending this to might be incorrect. Do you</p> <p>22 understand that?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">64</p> <p>1 A. No.</p> <p>2 Q. In your mind, just asking for your opinion,</p> <p>3 as an officer, as a person who does compliance, if a</p> <p>4 third party such as Kimmel & Silverman open this</p> <p>5 letter despite the fact it's not addressed to them,</p> <p>6 can that amount to an unauthorized third-party</p> <p>7 disclosure by EOS CCA?</p> <p>8 A. I don't believe so.</p> <p>9 Q. I believe you were asked earlier about</p> <p>10 Better Business Bureau complaints, AG complaints and</p> <p>11 legal complaints. Do you recall that?</p> <p>12 A. Yes.</p> <p>13 Q. I am going to ask you this: Are you aware</p> <p>14 of any Better Business Bureau complaint, AG</p> <p>15 complaint, or legal complaint where the consumer</p> <p>16 complained that a third party, complained of a</p> <p>17 third-party disclosure because another third party</p> <p>18 opened a letter addressed to the consumer?</p> <p>19 A. Yes.</p> <p>20 Q. And do you recall that case in particular?</p> <p>21 A. Yes. The case you're referring to is the</p> <p>22 Watts case, W A T T S.</p> <p>23 Q. And was that a Better Business Bureau</p>

<p style="text-align: right;">65</p> <p>1 complaint or what kind of claim?</p> <p>2 A. It was a lawsuit that was filed.</p> <p>3 Q. Do you know whatever happened with that</p> <p>4 lawsuit?</p> <p>5 A. Yes. The case was dismissed. We made a</p> <p>6 motion for dismissal and we were granted the</p> <p>7 dismissal of the case. It was deemed not to have</p> <p>8 violated the FDCPA.</p> <p>9 Q. Let me make sure I understand, that was a</p> <p>10 situation where EOS sent a letter marked</p> <p>11 confidential based on public record, based on a</p> <p>12 record search, is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And they sent it to I believe it was the</p> <p>15 stepson of the debtor, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it was addressed to the name of the</p> <p>18 debtor, is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And the stepson improperly opened the</p> <p>21 letter that wasn't addressed to him, is that</p> <p>22 correct?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">67</p> <p style="text-align: center;"><u>WITNESS CERTIFICATE</u></p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I, JOHN F. BURNS, JR., do hereby certify</p> <p>6 that I have read the foregoing transcript of my</p> <p>7 testimony and further certify that said transcript</p> <p>8 is a true and accurate record of said testimony.</p> <p>9</p> <p>10</p> <p>11 SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY</p> <p>12 THIS ____ DAY OF _____, 2012.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
<p style="text-align: right;">66</p> <p>1 Q. And the court found that wasn't a violation</p> <p>2 of the FDCPA?</p> <p>3 A. Yes. Their claim was it was a third-party</p> <p>4 disclosure but the court ruled otherwise.</p> <p>5 Q. I don't have any further questions. Thank</p> <p>6 you.</p> <p>7 A. Okay.</p> <p>8 MR. SCHWARTZ: Are we done.</p> <p>9 MR. GINSBURG: Yes. I have no further</p> <p>10 questions.</p> <p>11 (The proceedings adjourned</p> <p>12 at 3:24 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">68</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>1</p> <p>2 STATE OF MASSACHUSETTS)</p> <p>3)</p> <p>4 COUNTY OF NORFOLK)</p> <p>5 I, CAROL DIFAZIO, a Notary Public in and</p> <p>6 for the County of Norfolk, State of MASSACHUSETTS,</p> <p>7 do hereby certify:</p> <p>8 That the witness in the foregoing</p> <p>9 deposition was present at the time and place therein</p> <p>10 stated;</p> <p>11 That the said proceeding was taken before</p> <p>12 me as a Notary Public at the said time and place and</p> <p>13 was taken down in machine shorthand writing by me;</p> <p>14 That I am a Registered Professional</p> <p>15 Reporter of the State of Massachusetts, that the</p> <p>16 said proceeding was thereafter under my direction</p> <p>17 transcribed into computer-assisted transcription,</p> <p>18 and that the foregoing transcript constitutes a</p> <p>19 full, true, and correct report of the proceedings</p> <p>20 which then and there took place;</p> <p>21 IN WITNESS WHEREOF, I have hereunto</p> <p>22 subscribed my hand and affixed my seal this</p> <p>23 4th day of April, 2012.</p> <p style="text-align: center;">CAROL DIFAZIO Registered Professional Reporter</p> <p>My Commission expires November 14, 2014.</p> <p><u>THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT</u> <u>DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY</u> <u>ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR</u> <u>DIRECTION OF THE CERTIFYING REPORTER.</u></p>

WITNESS READING AND SIGNING INSTRUCTIONS

The transcript of JOHN F. BURNS, JR, taken on March 15, 2011, has been prepared. The signature page and errata sheet has been sent to Attorney Andrew Schwartz.

When reading and signing has been completed, the signature page and errata sheet should be forwarded to all counsel.

EXHIBITS WERE ATTACHED TO THE ORIGINAL TRANSCRIPT SENT TO ATTORNEY GINSBURG.

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